

SENATE BILL 550

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2003 Regular Session  
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By: ~~Senators Teitelbaum and Hafer, Hafer, Middleton, Astle, Della, Exum,~~  
**Gladden, Hooper, Kelley, Klausmeier, and Pipkin**

Introduced and read first time: January 31, 2003

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2003

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Nursing Homes - Third Party Liability Reviews and Audits**

3 FOR the purpose of ~~requiring the Health Care Quality Account to be funded by~~  
4 ~~certain State general funds; requiring the Department of Health and Mental~~  
5 ~~Hygiene to pay certain State general funds to the Comptroller; altering the~~  
6 ~~purposes for which the Account may be used; requiring nursing homes that~~  
7 ~~receive payment from the Medical Assistance Program to provide certain~~  
8 ~~financial information to the Department of Health and Mental Hygiene on a~~  
9 ~~quarterly basis; requiring the Department to conduct third party liability~~  
10 ~~reviews of certain financial information of nursing homes that receive payment~~  
11 ~~from the Medical Assistance Program; requiring authorizing the Department to~~  
12 ~~conduct third party liability audits of a random sample of nursing homes that~~  
13 ~~receive payment from the Medical Assistance Program; authorizing the~~  
14 ~~Department to conduct third party liability audits of certain nursing homes~~  
15 ~~under certain conditions; requiring that the audits be conducted at a certain~~  
16 ~~frequency; authorizing the Department to contract with an entity to perform the~~  
17 ~~audits; requiring the Department to use certain procurement procedures when~~  
18 ~~making certain contracts; requiring audit contracts to include certain items;~~  
19 ~~prohibiting audit contractors from being compensated in a certain manner;~~  
20 ~~requiring audit contractors to complete certain reports on a certain frequency;~~  
21 ~~requiring certain reports to include certain items; authorizing the Secretary to~~  
22 ~~establish certain appeals boards; designating the membership of the appeals~~  
23 ~~boards; authorizing a nursing home to appeal the final report of a third party~~  
24 ~~liability audit within a certain time period; requiring a certain individual within~~  
25 ~~the Department to conduct a certain review of a certain appeal by a nursing~~  
26 ~~home and issue a certain report; authorizing a nursing home to appeal the~~  
27 ~~results of a certain report to the Nursing Home Appeal Board within a certain~~

1 ~~time period; requiring State general funds recovered through third party~~  
 2 ~~liability audits to be deposited into the Account; authorizing the Department to~~  
 3 ~~adopt regulations regarding third party liability reviews and audits; requiring~~  
 4 ~~the Department of Health and Mental Hygiene and the Department of Human~~  
 5 ~~Resources to conduct a study of the Medical Assistance Program eligibility~~  
 6 ~~process for nursing home residents; requiring the Department of Health and~~  
 7 ~~Mental Hygiene and the Department of Human Resources to submit a report to~~  
 8 ~~the Governor and certain committees of the General Assembly on or before a~~  
 9 ~~certain date; and generally relating to third party liability reviews and audits of~~  
 10 ~~nursing homes.~~

11 ~~BY repealing and reenacting, with amendments,~~  
 12 ~~Article Health General~~  
 13 ~~Section 19-1407(a) and (b)~~  
 14 ~~Annotated Code of Maryland~~  
 15 ~~(2000 Replacement Volume and 2002 Supplement)~~

16 BY adding to  
 17 Article - Health - General  
 18 Section 19-14A-01 through ~~19-14A-06~~ 19-14A-04, inclusive, to be under the  
 19 new subtitle "Subtitle 14A. Third Party Liability Reviews and Audits of  
 20 Nursing Homes"  
 21 Annotated Code of Maryland  
 22 (2000 Replacement Volume and 2002 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Health - General**

26 ~~19-1407.~~

27 ~~(a) (1) There is a Health Care Quality Account established in the~~  
 28 ~~Department.~~

29 ~~(2) The Account shall be funded by:~~

30 ~~(I) civil money penalties paid by nursing homes [and];~~

31 ~~(II) other penalties that the Office of Health Care Quality may~~  
 32 ~~assess; AND~~

33 ~~(III) STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY~~  
 34 ~~LIABILITY AUDIT OF A NURSING HOME, AS AUTHORIZED UNDER SUBTITLE 14A OF~~  
 35 ~~THIS ARTICLE.~~

36 ~~(3) The Department shall pay TO THE COMPTROLLER OF THE STATE:~~

1                   ~~(I) all penalties collected under this title; AND~~

2                   ~~(II) ALL STATE GENERAL FUNDS RECOVERED FROM A THIRD PARTY~~  
 3 ~~LIABILITY AUDIT OF A NURSING HOME UNDER SUBTITLE 14A OF THIS ARTICLE [to~~  
 4 ~~the Comptroller of the State].~~

5                   ~~(4) The Comptroller shall distribute the funds collected under this title~~  
 6 ~~to the Health Care Quality Account.~~

7                   ~~(5) The Account is a continuing nonlapsing fund, not subject to § 7-302 of~~  
 8 ~~the State Finance and Procurement Article.~~

9                   ~~(6) Any unspent portions of the Account may not be transferred or~~  
 10 ~~reverted to the General Fund of the State, but shall remain in the Account to be used~~  
 11 ~~for the purposes specified in this section.~~

12           (b)     The Health Care Quality Account shall be used for:

13                   ~~(1) training[.];~~

14                   ~~(2) grant awards[.];~~

15                   ~~(3) demonstration projects[.];~~

16                   (4)     ENCOURAGEMENT OF INNOVATIVE PRACTICES;

17                   (5)     LONG TERM CARE WORKFORCE DEVELOPMENT;

18                   (6)     TESTING THE USE OF NEW TECHNOLOGIES;

19                   ~~(7) IMPROVING THE SURVEY AND ENFORCEMENT PROCESS; or~~

20                   ~~(8) other purposes designed to improve the quality of care.~~

21                   SUBTITLE 14A. THIRD PARTY LIABILITY REVIEWS AND AUDITS OF NURSING HOMES.

22 19-14A-01.

23           (A)     IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 24 INDICATED.

25           ~~(B)     "BOARD" MEANS AN APPEAL BOARD ESTABLISHED BY THE SECRETARY~~  
 26 ~~UNDER THIS SUBTITLE.~~

27           ~~(C)     "ERROR RATE" MEANS ONE LESS THE AMOUNT OF THE FINAL REPORTS~~  
 28 ~~DIVIDED BY THE AMOUNT OF THE INITIAL REPORTS IN THE CONTRACT PERIOD.~~

29           ~~(D)~~     (B)     "FINAL REPORT" MEANS THE CONTRACTOR THIRD PARTY LIABILITY  
 30 AUDIT REPORT ISSUED TO THE DEPARTMENT AND A NURSING HOME STATING THE  
 31 TOTAL AMOUNT DUE TO THE DEPARTMENT AS A RESULT OF THE COMPLETED AUDIT.

1 ~~(E)~~ "INITIAL REPORT" MEANS THE CONTRACTOR REPORT ISSUED TO THE  
2 PROVIDER STATING THE CONTRACTOR'S PROPOSED ADJUSTMENTS.

3 ~~(F)~~ (C) "NURSING HOME" HAS THE MEANING STATED IN § 19-1401(E) OF THIS  
4 TITLE.

5 ~~(G)~~ (D) (1) "THIRD PARTY" MEANS ANY INDIVIDUAL, ENTITY, OR PROGRAM  
6 THAT IS OR MAY BE LIABLE TO PAY ALL OR PART OF THE MEDICAL COST OF ANY  
7 MEDICAL ASSISTANCE FURNISHED TO A RECIPIENT UNDER THE MEDICAL  
8 ASSISTANCE PROGRAM.

9 (2) "THIRD PARTY" INCLUDES PRIVATE HEALTH INSURANCE,  
10 EMPLOYMENT-RELATED HEALTH INSURANCE, MEDICAL SUPPORT FROM ABSENT  
11 PARENTS, AUTOMOBILE INSURANCE, COURT JUDGMENTS OR SETTLEMENTS FROM A  
12 LIABILITY INSURER, STATE WORKERS' COMPENSATION, FIRST PARTY  
13 PROBATE-ESTATE RECOVERIES, OR ANY FEDERAL PROGRAMS.

14 ~~(H)~~ (E) "THIRD PARTY LIABILITY AUDIT" MEANS A FINANCIAL REVIEW OF  
15 MEDICAL ASSISTANCE PAYMENTS TO A PROVIDER TO ASCERTAIN THE LEGAL  
16 LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE UNDER  
17 THE MEDICAL ASSISTANCE PROGRAM.

18 (F) "THIRD PARTY LIABILITY REVIEW" MEANS A FINANCIAL REVIEW OF THE  
19 CREDIT BALANCES OF A NURSING HOME TO ASCERTAIN THE LEGAL LIABILITY OF  
20 THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE UNDER THE MEDICAL  
21 ASSISTANCE PROGRAM.

22 19-14A-02.

23 (A) A NURSING HOME THAT RECEIVES PAYMENT FROM THE MEDICAL  
24 ASSISTANCE PROGRAM SHALL PROVIDE A REPORT OF THE CREDIT BALANCES OF THE  
25 NURSING HOME TO THE DEPARTMENT ON A QUARTERLY BASIS.

26 ~~(A)~~ (B) THE DEPARTMENT SHALL CONDUCT A THIRD PARTY LIABILITY  
27 AUDIT REVIEW OF THE REPORT OF THE CREDIT BALANCES PROVIDED UNDER  
28 SUBSECTION (A) OF THIS SECTION. EACH NURSING HOME THAT RECEIVES PAYMENT  
29 FROM THE MEDICAL ASSISTANCE PROGRAM.

30 (C) THE DEPARTMENT MAY CONDUCT A THIRD PARTY LIABILITY AUDIT OF A  
31 RANDOM SAMPLE OF THE REPORTS OF CREDIT BALANCES REVIEWED UNDER  
32 SUBSECTION (B) OF THIS SECTION.

33 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE  
34 DEPARTMENT MAY CONDUCT A THIRD PARTY LIABILITY AUDIT OF A NURSING HOME  
35 THAT IS FOUND TO BE NONCOMPLIANT AS A RESULT OF THE AUDIT CONDUCTED  
36 UNDER SUBSECTION (C) OF THIS SECTION.

37 (2) IN CONDUCTING THE THIRD PARTY LIABILITY AUDIT AUTHORIZED  
38 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT MAY ONLY REVIEW  
39 THE FINANCIAL INFORMATION OF THE NURSING HOME FOR THE 2-YEAR PERIOD

1 IMMEDIATELY PRIOR TO THE DATE OF THE AUDIT PERIOD IN WHICH THE NURSING  
2 HOME WAS FOUND TO BE NONCOMPLIANT.

3 ~~(B) A THIRD PARTY LIABILITY AUDIT SHALL BE CONDUCTED AT LEAST ONCE~~  
4 ~~EVERY 2 YEARS.~~

5 ~~(C) THE DEPARTMENT MAY CONTRACT WITH AN ENTITY TO PERFORM THIRD~~  
6 ~~PARTY LIABILITY AUDITS.~~

7 ~~(D) IN CONTRACTING WITH AN ENTITY TO PERFORM THIRD PARTY LIABILITY~~  
8 ~~AUDITS, THE DEPARTMENT SHALL USE STANDARD PROCUREMENT PROCEDURES.~~

9 ~~19-14A-03.~~

10 ~~(A) A CONTRACT FOR THE PERFORMANCE OF A THIRD PARTY LIABILITY AUDIT~~  
11 ~~SHALL INCLUDE:~~

12 ~~(1) A BUDGET TO COVER THE ADMINISTRATIVE EXPENSES OF THE~~  
13 ~~CONTRACTOR;~~

14 ~~(2) AN ESTIMATE OF THE AMOUNT OF GENERAL FUNDS THE~~  
15 ~~DEPARTMENT ANTICIPATES WILL BE RECOVERED THROUGH THE AUDIT; AND~~

16 ~~(3) A PENALTY TO THE VENDOR IF THE ERROR RATE EXCEEDS 20% AT~~  
17 ~~THE CONCLUSION OF THE CONTRACT PERIOD.~~

18 ~~(B) A THIRD PARTY LIABILITY CONTRACTOR MAY NOT BE COMPENSATED~~  
19 ~~SOLELY:~~

20 ~~(1) ON A CONTINGENCY BASIS; OR~~

21 ~~(2) BY A PERCENTAGE OF THE FUNDS RECOVERED THROUGH THE~~  
22 ~~AUDIT.~~

23 ~~(C) EACH CONTRACTOR SHALL COMPLETE AUDIT STATUS REPORTS FOR EACH~~  
24 ~~AUDIT UNDERTAKEN BY THE CONTRACTOR.~~

25 ~~(D) EACH AUDIT STATUS REPORT SHALL:~~

26 ~~(1) BE SUBMITTED TO THE DEPARTMENT ON A QUARTERLY BASIS; AND~~

27 ~~(2) AT A MINIMUM INCLUDE:~~

28 ~~(I) THE NUMBERS OF REPORTS ISSUED; AND~~

29 ~~(II) THE DOLLAR AMOUNTS OF BOTH INITIAL AND FINAL REPORTS.~~

30 ~~19-14A-04. 19-14A-03.~~

31 ~~(A) THE SECRETARY MAY:~~

1           (1)     ~~ESTABLISH ONE OR MORE APPEAL BOARDS FOR THE PURPOSES OF~~  
2 ~~THIS SECTION; AND~~

3           (2)     ~~DESIGNATE THE JURISDICTION OF A BOARD.~~

4     ~~(B)     A BOARD SHALL CONSIST OF THREE MEMBERS:~~

5           (1)     ~~TWO OF WHOM SHALL BE APPOINTED BY THE SECRETARY; AND~~

6           (2)     ~~ONE OF WHOM SHALL BE CHOSEN BY THE APPOINTED MEMBERS.~~

7     ~~(C)     OF THE TWO APPOINTED MEMBERS:~~

8           (1)     ~~ONE SHALL BE A REPRESENTATIVE OF THE NURSING HOME~~  
9 ~~INDUSTRY WHO IS KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE~~  
10 ~~BILLING PROCEDURES; AND~~

11          (2)     ~~ONE SHALL BE AN INDIVIDUAL WHO IS EMPLOYED BY THIS STATE~~  
12 ~~AND KNOWLEDGEABLE IN MEDICARE AND MEDICAL ASSISTANCE BILLING~~  
13 ~~PROCEDURES AND WHO DOES NOT DIRECTLY PARTICIPATE IN THE THIRD PARTY~~  
14 ~~LIABILITY AUDITS.~~

15     ~~(D)     (A)     A NURSING HOME MAY APPEAL THE RESULTS OF A FINAL REPORT OF~~  
16 ~~A THIRD PARTY LIABILITY AUDIT BY FILING WRITTEN NOTICE WITH THE~~  
17 ~~DEPARTMENT APPROPRIATE APPEAL BOARD WITHIN 30 DAYS AFTER THE NURSING~~  
18 ~~HOME RECEIVES THE FINAL REPORT FROM THE DEPARTMENT OR ITS AGENT.~~

19     ~~(B)     AN INDIVIDUAL AT THE DEPARTMENT WHO DID NOT PARTICIPATE IN THE~~  
20 ~~FINAL REPORT SHALL:~~

21          (1)     ~~REVIEW THE APPEAL AUTHORIZED UNDER SUBSECTION (A) OF THIS~~  
22 ~~SECTION; AND~~

23          (2)     ~~ISSUE A REPORT THAT EITHER REVISES OR CONCURS WITH THE~~  
24 ~~FINAL REPORT OF THE THIRD PARTY LIABILITY AUDIT.~~

25     ~~(C)     A NURSING HOME MAY APPEAL THE RESULTS OF THE REPORT ISSUED BY~~  
26 ~~THE DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION BY FILING WRITTEN~~  
27 ~~NOTICE WITH THE NURSING HOME APPEAL BOARD WITHIN 30 DAYS OF RECEIPT OF~~  
28 ~~THE REPORT.~~

29 ~~19-14A-05.~~

30     ~~ANY GENERAL FUNDS RECOVERED THROUGH A THIRD PARTY LIABILITY AUDIT~~  
31 ~~OF A NURSING HOME THAT ARE IN EXCESS OF THE CONTRACT AMOUNT SHALL BE~~  
32 ~~DEPOSITED INTO THE HEALTH CARE QUALITY ACCOUNT ESTABLISHED UNDER §~~  
33 ~~19-1407 OF THIS TITLE.~~

1 ~~19-14A-06-19-14A-04.~~

2 THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE  
3 PROVISIONS OF THIS SUBTITLE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That:

5 ~~(a) On or before December 1, 2003, the~~ The Department of Health and Mental  
6 Hygiene and the Department of Human Resources shall ~~conduct a study of the~~  
7 ~~Medical Assistance Program eligibility determination process~~ submit a report to the  
8 Governor and, in accordance with § 2-1246 of the State Government Article, to the  
9 Senate Finance Committee and the House Health and Government Operations  
10 Committee on the status of measures implemented and considered by the  
11 Department of Health and Mental Hygiene and the Department of Human Resources  
12 to address and resolve issues relating to delays in the Medicaid eligibility process for  
13 nursing home residents.

14 (b) The study shall:

15 (1) ~~describe the Medical Assistance Program eligibility determination~~  
16 ~~process and subsequent changes in Medical Assistance Program enrollee status for~~  
17 ~~nursing home residents;~~

18 (2) ~~calculate the average time period for determining changes in the~~  
19 ~~financial and eligibility status of nursing home residents; and~~

20 (3) ~~identify any barriers or delays in:~~

21 ~~(i) the processing of Medical Assistance Program eligibility~~  
22 ~~determination; and~~

23 ~~(ii) the communication of subsequent changes in Medical~~  
24 ~~Assistance Program enrollee status to a nursing home.~~

25 (c) ~~On or before October 1, 2003, the Department of Health and Mental~~  
26 ~~Hygiene and the Department of Human Resources shall submit a report to the~~  
27 ~~Governor and, in accordance with § 2-1246 of the State Government Article, to the~~  
28 ~~Senate Finance Committee and the House Health and Government Operations~~  
29 ~~Committee on the results of the study.~~

30 (d) The report shall include recommendations for:

31 (1) ~~addressing any identified barriers or delays;~~

32 (2) ~~streamlining the eligibility determination process for nursing home~~  
33 ~~residents; and~~

34 (3) ~~improving communication between the Department of Health and~~  
35 ~~Mental Hygiene, the Department of Human Resources, and nursing homes regarding~~

1 ~~the eligibility of nursing home residents under the Medical Assistance Program and~~  
2 ~~any changes in eligibility status.~~

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2003.